



To enrich lives through effective and caring service



Santos H. Kreimann
Director

Kerry Silverstrom
Chief Deputy

Gary Jones
Deputy Director

September 11, 2012

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

37 September 18, 2012

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

Dear Supervisors:

**SOLE SOURCE CONTRACT AWARD FOR AS-NEEDED
TRAFFIC ENGINEERING CONSULTING SERVICES
(SUPERVISORIAL DISTRICTS 3 AND 4)
(3 VOTES)**

SUBJECT

This action is to award a sole source contract for as-needed traffic engineering consulting services to Mr. Barry Kurtz, Professional Engineer.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the proposed action is not subject to the California Environmental Quality Act (CEQA), as it does not meet the definition of a "Project" under Section 15378 of the CEQA Guidelines.
2. Find that special circumstances exist and grant an exemption from County Code Section 2.180.010 to allow contracting within twelve months of the end of Mr. Barry Kurtz's employment as a 120-day rehired County retiree in a position of substantial responsibility in the area of service to be performed by the contract.
3. Approve award of and instruct the Chairman to sign a three-year contract with two one-year extension options with Mr. Barry Kurtz, Professional Engineer, for as-needed traffic engineering consulting services pertaining to Marina del Rey and County-operated beaches, to commence on October 1, 2012, at an annual cost not to exceed \$100,000, totaling a maximum amount of \$500,000 for a potential total term of five years.

4. Authorize the Director of the Department of Beaches and Harbors to exercise the two one-year renewal options for the contract if, in his opinion, Mr. Barry Kurtz has effectively performed the services during the previous contract period and the services are still required.
5. Authorize the Director of the Department of Beaches and Harbors to extend the contract term or any optional contract year on a month-to-month basis for up to 12 months, subject to the contract's terms and conditions, but only to allow Mr. Barry Kurtz to complete a work order approved before the expiration of the contract term or optional contract year.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Approval of the proposed contract (Attachment I) with Mr. Barry Kurtz, Professional Engineer (P.E.), will enable the Department of Beaches and Harbors (Department) to have a qualified traffic engineering consultant to provide traffic engineering services, ensuring the success of improvement projects in Marina del Rey and at County beaches. The services entail project management responsibilities including cost estimation, budgeting and ensuring contract compliance with engineering standards, as well as managing and directing the work of other contractors as required for development and redevelopment projects in Marina del Rey and at the beaches.

Mr. Kurtz is currently performing these services on a part-time basis as a 120-day rehired County retiree. He is unable to continue working under the current retiree compensation arrangement, however, because his compensation is limited to that of his former position. He is able to earn substantially more for the same services he is performing for other jurisdictions.

The Department believes that Mr. Kurtz is indispensable and uniquely qualified to provide the traffic engineering services that are required. We, therefore, request to retain Mr. Kurtz as a consultant, so that his services are available for upcoming development projects in Marina del Rey and at the beaches.

Implementation of Strategic Plan Goals

The traffic engineering consulting services will promote and further the Board approved Strategic Plan Goal of Community and Municipal Services (Goal 3), enabling the Department to immediately respond to a need for specialized traffic engineering services and ensuring successful completion of development and redevelopment projects in Marina del Rey and at the beaches.

FISCAL IMPACT/FINANCING

The total compensation for all County-funded traffic engineering consulting services shall not exceed \$100,000 in any contract year. This amount may be supplemented to the extent a lessee is obligated to reimburse the consultant's fees and expenses pursuant to the Process for Managing Marina del Rey Leasehold Extension Proposals as approved by your Board on March 21, 1995. Similarly, the amount could be supplemented to the extent another County department uses this contract for work performed in connection with Marina or beach facilities needing traffic engineering consulting services with respect thereto within the scope of this contract.

Operating Budget Impact

The cost of this contract is included in the Department's 2012-13 Adopted Budget.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The contract is not subject to Chapter 2.121, Contracting with Private Businesses, of the County Code because the services are needed on a part-time or intermittent basis only.

The Director of the Department may extend the contract term or any optional contract year on a month-to-month basis for up to 12 months, subject to the contract's terms and conditions, but only to allow Mr. Kurtz to complete a work order approved before the expiration of the contract term or optional contract year.

The contract contains the County's standard provisions regarding contractor obligations and is in compliance with all Board, Chief Executive Office (CEO) and County Counsel requirements, except as noted below.

The contract is not subject to the County's Living Wage Ordinance as the services are of a technical nature and are being utilized on an as-needed basis.

In accordance with your Board's Sole Source Contracts Policy Number 5.100, the Sole Source Checklist is attached as Attachment II.

Because Mr. Kurtz is currently employed by the County as a 120-day rehired retiree, we ask that your Board finds that special circumstances exist and grant an exemption from County Code Section 2.180.010, which prohibits contracting with certain persons or entities who within the previous 12 months were employed in a position of substantial responsibility in the area of service to be performed by the contract. Mr. Kurtz's employment with the

County will cease upon the execution of this contract.

The contract has been approved as to form by County Counsel. The CEO's Risk Management Office has approved the insurance coverage, indemnification and liability provisions included in the contract.

The Department is asking that your Board approve exceptions from the following standard County provisions:

- Section 2.6, Compliance with Civil Rights Laws – Mr. Kurtz is a sole proprietor and does not have any employees. Therefore, the form associated with this provision is not applicable and will not be completed by Mr. Kurtz. The language of the section remains applicable and is included in the contract.
- Section 2.7, Employee Jury Service Program – Mr. Kurtz is a sole proprietor and does not have any employees. Therefore, this section is not applicable.
- Section 2.8, Conflict of Interest – Because Mr. Kurtz it is currently employed by the County as a 120-day County rehired retiree, he cannot certify to this provision until your Board grants an exemption from County Code Section 2.180.010. He will complete the form associated with this provision after your Board approves this action and his employment with the County is terminated.
- Consideration of Hiring Gain/Grow Program Participants – Mr. Kurtz is a sole proprietor and does not have any employees. Therefore, this section is not applicable and has been removed.

Please note that County Counsel has reviewed and concurred with these exceptions.

ENVIRONMENTAL DOCUMENTATION

The proposed action is not subject to the California Environmental Quality Act (CEQA), as it does not meet the definition of a "Project" under Section 15378 of the CEQA Guidelines.

CONTRACTING PROCESS

On June 28, 2012, in accordance with Sole Source Contracts Policy Number 5.100, the Department sent your Board notice informing your Board that the Department intended to negotiate a sole source contract with Mr. Barry Kurtz, P.E.

The Department believes Mr. Kurtz is currently indispensable and uniquely qualified to provide traffic and transportation engineering services for Marina del Rey regional and local development and redevelopment projects, because he has been providing these types of services since 1984. While a former Assistant Division Head at the County's Department of Public Works (Public Works), Mr. Kurtz wrote the traffic and circulation portion of the Marina del Rey Local Coastal Program (LCP) and developed the traffic study criteria for Public Works that is specified in the LCP. Additionally, since 1984, Mr. Kurtz has been instrumental in planning improvements and changes to the transportation system in Marina del Rey and in the surrounding areas. Currently, as a 120-day County rehired retiree, he has provided traffic and circulation comments to Department staff used in the Department's response to the Coastal Commission's Marina del Rey LCP Periodic Review findings and recommendations.

Specific examples of Mr. Kurtz's work related to Marina del Rey include:

- Created the County's planned Marina del Rey transportation projects and the County's highway improvement projects contained in the Marina del Rey LCP: These projects currently include the Admiralty Way/Via Marina reconfigured intersection project and the Admiralty Way intersection widening projects.
- Worked on the Marina del Rey LCP map and text amendment: Using his historical knowledge of the Marina del Rey LCP, Mr. Kurtz has prepared traffic circulation information for the LCP map and text amendment that was almost unanimously approved by the Coastal Commission. Also in furtherance of this amendment, he worked with the traffic consultant who performed the Marina del Rey "Right-Sizing Parking Study for the Public Parking Lots in Marina del Rey".
- Secured Costco's mitigation money from Culver City (\$1.5 million): Mr. Kurtz coordinated with Culver City and the City of Los Angeles to enable the transfer of \$1.5 million Costco paid Culver City in Regional Traffic Mitigation Funds. Mr. Kurtz was also successful in obtaining traffic mitigation fees from the Chateau Marina and other developments in the City of Los Angeles.
- Secured \$707,000 from the Metropolitan Transportation Authority (MTA) for bike lanes on Fiji Way: Mr. Kurtz conceived of and successfully secured funds from MTA to widen Fiji Way in order to install bicycle lanes. Mr. Kurtz is considered an expert on bicycle facilities and serves on the State of California Department of Transportation's (Caltrans) Bicycle Advisory Committee. He also works with Marina del Rey developers to facilitate bicycle travel through their developments.

- Organized and served as co-chair of the Lincoln Corridor Task Force (LCTF): Mr. Kurtz organized and was co-chair of the LCTF to pool resources by the County, the Cities of Los Angeles, Santa Monica, and Culver City, Caltrans and other agencies to explore methods to relieve traffic congestion along the Lincoln Boulevard corridor. One of the products of the LCTF was the establishment of a rapid bus line along Lincoln Boulevard. The LCTF recommended the establishment of a light rail line as a long-term transportation improvement.
- Worked with the City of Los Angeles to determine appropriate traffic mitigation measures and developer fees from Playa Vista: Mr. Kurtz worked with the City of Los Angeles to determine appropriate traffic mitigation measures and developer fees from Playa Vista. Using these same fees, Mr. Kurtz worked with the City of Los Angeles and Caltrans to plan the widening of Lincoln and Washington Boulevards.

Mr. Kurtz's work connected to the County's beaches includes:

- Modified the Gladstone's restaurant traffic signal at Sunset Boulevard and Pacific Coast Highway (PCH) for improved egress: Following several accidents at the Gladstones restaurant exit driveway, Mr. Kurtz coordinated with Caltrans, the City of Los Angeles, DPW and the restaurant to modify the traffic signal at Sunset Boulevard and PCH to allow restaurant customers to exit with traffic signal protection.
- Working on a new exit driveway from the Temescal parking lot at Will Rogers State Beach: Following complaints that beachgoers at Will Rogers State Beach had long delays in exiting the parking lot, Mr. Kurtz coordinated with Caltrans and Public Works on a project to construct a new driveway to relieve congestion when exiting the lot, which is currently being designed. Because of inadequate visibility, he also had parking lot signs moved back to improve the line of sight.
- Conducted a comprehensive traffic study at Zuma Beach: Mr. Kurtz conducted a comprehensive traffic study to show that the loop ramp from PCH to the Zuma Beach parking lot is essential for adequate access to the parking lot and must remain open.
- Initiated a project to add a pedestrian path to the Marvin Braude Bicycle Trail: Mr. Kurtz initiated a project to add a pedestrian path to the Marvin Braude Bicycle Trail from Will Rogers State Beach to the City of Santa Monica to reduce the potential conflict between bicyclists and pedestrians and to improve bicycle transportation

along the beach bike path. Mr. Kurtz is on a task force organized by the Third Supervisorial District to advance this project.

Finally, Mr. Kurtz has testified before your Board, the Coastal Commission, the Regional Planning Commission, the Small Craft Harbor Design Control Board, and the Small Craft Harbor Commission, as well as at various community meetings, on an incalculable number of occasions. He has excellent verbal and written skills and has prepared Board letters, memos, correspondence and technical reports with respect to Marina del Rey traffic-related issues. He also has an excellent working relationship with whomever he works.

A new traffic engineer would require an extensive learning curve in order to understand the complex issues surrounding Marina del Rey, which, in turn, will cause delays in current and future projects. Therefore, a sole source contract with Mr. Kurtz is in the County's best interest, as allowable by your Board's Sole Source Contracts Policy Number 5.100, and will allow the County to retain the knowledge and experience required for completion of projects in Marina del Rey and at the County Beaches.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

This action will provide for the continuation of part-time services that are currently provided by Mr. Kurtz as a 120-day rehired County retiree.

The Honorable Board of Supervisors
September 11, 2012
Page 8

CONCLUSION

Authorize the Executive Officer of the Board to send two approved copies of this letter, as well as two executed copies of the contract, to the Department of Beaches and Harbors.

Respectfully submitted,

Gary Jones
for SANTOS H. KREIMANN
Director

SHK:ks

Attachments (2)

c: Chief Executive Officer
County Counsel
Executive Officer, Board of Supervisors



CONTRACT

BY AND BETWEEN

COUNTY OF LOS ANGELES

AND

BARRY KURTZ, P.E.

FOR

**AS-NEEDED TRAFFIC ENGINEER
CONSULTANT SERVICES**

**LOS ANGELES COUNTY DEPARTMENT OF BEACHES AND HARBORS
CONTRACT FOR
AS-NEEDED TRAFFIC ENGINEER CONSULTANT SERVICES**

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
1.0 GENERAL CONDITIONS.....	4
1.1 INTRODUCTION	4
1.2 INTERPRETATION OF CONTRACT	5
1.3. CONTRACT TERM	5
1.4 CONTRACT SUM	6
1.5 INVOICES AND PAYMENTS	8
1.6 ADMINISTRATION OF CONTRACT – CONTRACTOR	9
2.0 STANDARD TERMS AND CONDITIONS	12
2.1 AMENDMENTS	12
2.2 ASSIGNMENT AND DELEGATION.....	12
2.3 AUTHORIZATION WARRANTY	13
2.4 BUDGET REDUCTIONS	13
2.5 COMPLIANCE WITH APPLICABLE LAW	14
2.6 COMPLIANCE WITH CIVIL RIGHTS LAWS	15
2.7 COMPLIANCE WITH THE COUNTY'S JURY SERVICE PROGRAM	15
2.8 CONFLICT OF INTEREST	15
2.9 CONSIDERATION OF HIRING COUNTY EMPLOYEES TARGETED FOR LAYOFF/OR RE-EMPLOYMENT LIST	16
2.10 CONTRACTOR RESPONSIBILITY AND DEBARMENT	16
2.11 CONTRACTOR'S ACKNOWLEDGEMENT OF COUNTY'S COMMITMENT TO THE SAFELY SURRENDERED BABY LAW.....	19
2.12 CONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM	19
2.13 CONTRACTOR'S WARRANTY OF COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM	20
2.14 COUNTY'S QUALITY ASSURANCE PLAN.....	20
2.15 DAMAGE TO COUNTY FACILITIES, BUILDINGS OR GROUNDS	21
2.16 EMPLOYMENT ELIGIBILITY VERIFICATION	21
2.17 FACSIMILE REPRESENTATIONS.....	22
2.18 FAIR LABOR STANDARDS	22
2.19 FORCE MAJEURE.....	22

**LOS ANGELES COUNTY DEPARTMENT OF BEACHES AND HARBORS
CONTRACT FOR
AS-NEEDED TRAFFIC ENGINEER CONSULTANT SERVICES**

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
2.20 GOVERNING LAW, JURISDICTION AND VENUE	23
2.21 INDEPENDENT CONTRACTOR STATUS.....	23
2.22 INDEMNIFICATION	24
2.23 GENERAL PROVISIONS FOR ALL INSURANCE COVERAGE	24
2.24 INSURANCE COVERAGE	29
2.25 LIQUIDATED DAMAGES	30
2.26 MOST FAVORED PUBLIC ENTITY	32
2.27 NONDISCRIMINATION AND AFFIRMATIVE ACTION.....	32
2.28 NON EXCLUSIVITY	33
2.29 NOTICE OF DELAYS.....	33
2.30 NOTICE OF DISPUTES	34
2.31 NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT.....	34
2.32 NOTICE TO EMPLOYEES REGARDING THE SAFELY SURRENDERED BABY LAW	34
2.33 NOTICES.....	34
2.34 PROHIBITION AGAINST INDUCEMENT OR PERSUASION.....	35
2.35 PUBLIC RECORDS ACT	35
2.36 PUBLICITY.....	36
2.37 RECORD RETENTION AND INSPECTION/AUDIT SETTLEMENT	36
2.38 RECYCLED BOND PAPER	38
2.39 SUBCONTRACTING.....	38
2.40 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM	39
2.41 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM.....	40
2.42 TERMINATION FOR CONVENIENCE	40
2.43 TERMINATION FOR DEFAULT	41
2.44 TERMINATION FOR IMPROPER CONSIDERATION.....	42

**LOS ANGELES COUNTY DEPARTMENT OF BEACHES AND HARBORS
CONTRACT FOR
AS-NEEDED TRAFFIC ENGINEER CONSULTANT SERVICES**

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
2.45 TERMINATION FOR INSOLVENCY	43
2.46 TERMINATION FOR NON-ADHERENCE OF COUNTY LOBBYIST ORDINANCE.....	43
2.47 TERMINATION FOR NON-APPROPRIATION OF FUNDS.....	44
2.48 VALIDITY	44
2.49 WAIVER.....	44
2.50 WARRANTY AGAINST CONTINGENT FEES.....	44
3.0 UNIQUE TERMS AND CONDITIONS	46
3.1 LOCAL SMALL BUSINESS ENTERPRISE (SBE) PREFERENCE PROGRAM	46
3.2 TRANSITIONAL JOB OPPORTUNITIES PREFERENCE PROGRAM.....	47
3.3 EMPLOYMENT CONFLICTS.....	48

**LOS ANGELES COUNTY DEPARTMENT OF BEACHES AND HARBORS
CONTRACT FOR AS- NEEDED TRAFFIC ENGINEER CONSULTANT SERVICES**

PART ONE – GENERAL CONDITIONS

1.0 GENERAL CONDITIONS

1.1 INTRODUCTION

1.1.1 Parties

This Contract is entered into by and between the County of Los Angeles (the "County") and Barry Kurtz, P.E. (the "Contractor").

1.1.2 Recitals

The Contract is intended to integrate within one document the terms for the as-needed traffic engineering services to be performed for the County by the Contractor. The Contractor represents to the County that the express representations, certifications, assurances and warranties given in this Contract, Form P-1 (Offer to Perform) and Form P-2 (Proposer's Organization/Questionnaire Affidavit) are true and correct.

The Contractor further represents that the express representations, certifications, assurances and warranties given by the Contractor in response to the Contract are true and correct.

1.1.3. Effective Date

The effective date of this Contract shall be the later of October 1, 2012 or the date of Board approval.

1.1.4 Contract Provisions

The Contract is comprised of this Part 1 (General Conditions), Part 2 (Standard Contract Terms and Conditions), Part 3 (Unique Terms and Conditions), and the Exhibits and Forms, all of which are attached to this Contract and incorporated by reference.

1.1.5 Work to be Performed

Contractor shall perform the work set forth in the Statement of Work. Pursuant to the provisions of this Contract, the Contractor shall fully perform, complete and deliver on time all tasks, deliverables, services and other work as set forth herein. If the Contractor provides any tasks, deliverables, goods, services or other work, other than as specified in this

77840

Contract, the same shall be deemed to be a gratuitous effort on the part of the Contractor, and the Contractor shall have no claim whatsoever against the County.

1.1.6 Rescission

The County may rescind the Contract for the Contractor's misrepresentation of any of the matters mentioned in Section 1.1.2. In the case of a misrepresentation of the facts set forth in Section 2.50, a penalty may be assessed in the amount of the fee paid by the Contractor to a third person for the award of the Contract.

1.2 INTERPRETATION OF CONTRACT

1.2.1 Headings

The headings contained in the Contract are for convenience and reference only. They are not intended to define or limit the scope of any provision of the Contract.

1.3. CONTRACT TERM

1.3.1 Initial Term

The initial Contract term shall be three years commencing on the later of October 1, 2012 or the date of execution by County's Board of Supervisors, unless sooner terminated or extended, in whole or in part, as provided in this Contract.

1.3.2 Two One-Year Extension Options

If the Director determines that it is in the interest of the County to do so, he may grant up to two one-year extensions of the Contract term. The Director shall have the option to exercise the first option by notifying the Contractor in writing before the Contract expiration date. The Director may exercise the second option by notifying the Contractor in writing before the expiration of the first optional Contract Year.

The County maintains databases that track/monitor contractor performance history. Information entered into such databases may be used for a variety of purposes, including without limitation determining whether the County will exercise a Contract term extension option.

1.3.3 Extension to Complete Work Order

The Director may extend the Contract term or any optional Contract Year on a month-to-month basis subject to the Contract's terms and conditions, but only to allow the Contractor to complete a Work Order approved before the expiration of the Contract term or optional Contract Year.

Such extensions are further subject to the availability of funds in the Department's budget. Up to 12 such one-month extensions may be granted, which shall be effective only if executed in writing by the Director or Chief Deputy. Contractor shall not perform any work on approved Work Orders after the expiration of the contract without an approved written extension.

1.3.4 Contractor to Notify County When It Is within 6 Months from Expiration of Term

The Contractor shall notify the Department when this Contract is within six (6) months from the expiration of the term as provided for hereinabove. Upon occurrence of this event, the Contractor shall send written notification to the Department.

1.3.5 Survival of Obligations

Notwithstanding the stated term of the Contract, some obligations assumed in the Contract shall survive its termination, such as, but not limited to, the Contractor's obligation to retain and allow inspection by the County of its books, records and accounts relating to its performance of the Contract work.

1.4 CONTRACT SUM

1.4.1 Compensation

The net amount the County shall expend from its own funds during any Contract year for as-needed traffic engineering services shall not exceed \$100,000, which sum is also the maximum amount of County funds available under the Contract. The County may at its discretion expend any portion, all or none of that amount. However, aggregate annual payments for as-needed traffic engineering services may exceed the stipulated amount to the extent that a lessee or other third party is

obligated to reimburse the County, when County uses as-needed traffic engineering services for third party benefit.

1.4.2 Compensation Payable Only Under Work Order at Quoted Hourly Rates

Notwithstanding any other provisions of the Contract, no compensation shall be paid unless and until the Contractor has performed work for the Department in accordance with the terms of an issued Work Order (Exhibit 1) and executed by the Director or the Chief Deputy Director. The Work Order shall state the maximum amount payable for the specified work. Compensation for all work under a Work Order shall be at Contractor's hourly rate(s) of pay as quoted on Form P-1, and shall be subject to Sections 1.4.1, 1.4.7, and 2.47.

1.4.3 Preparation of Itemized Estimate, Work Statements, and Billing to be Treated as Overhead

Notwithstanding any other provisions of the Contract, the time expended by the Contractor in the preparation of invoices shall be treated as overhead, shall not be directly charged in itemized invoices and shall not entitle Contractor to any direct compensation. The parties understand and agree that the Contractor's hourly rates for work performed include an amount which will compensate the Contractor for all labor, professional liability, licenses, registrations, and nearby transportation. The Department will provide work space with materials, supplies, data systems, telephone expenses, facsimile transmissions, and photocopying equipment.

1.4.4 No Increase in Hourly Rate(s) of Compensation

Notwithstanding any increase in the Contractor's salary costs or other overhead, no increase in the hourly rate(s) of compensation quoted in Form P-1 shall be given during the term of the Contract or any extension period.

1.4.5 Maximum Compensation under Work Order

Maximum compensation for each work order shall be determined by the total hours bid on the assignment at the Contractor's hourly rate(s). Each work order shall contain a firm monetary cap, based on the Contractor's hourly rate(s).

1.4.6 Increase in Maximum Compensation Under Work Order

The Director may approve an increase in the maximum compensation specified in a Work Order should he find that the project will require additional hours, an increase in staffing, or other cause to do so. An increase in the maximum number of hours specified in a Work Order shall not increase the Contractor's hourly rate(s) of compensation. Approval of an increase in the maximum number of hours specified in a Work Order shall be effective only if executed in writing by the Director or Chief Deputy, who shall state the reason for the increase.

1.4.7 Contractor to Notify County when it has Received 75% of Total Contract Amount

The Contractor shall maintain a system of record keeping that will allow the Contractor to determine when it has incurred seventy-five percent of the total contract authorization under this Contract. Upon occurrence of this event, the Contractor shall send written notification to the Department.

1.4.8 No Payment for Services Provided Following Expiration/Termination of Contract

The Contractor shall have no claim against County for payment of any money or reimbursement, of any kind whatsoever, for any service provided by the Contractor after the expiration or other termination of this Contract. Should the Contractor receive any such payment, it shall immediately notify County and shall immediately repay all such funds to County. Payment to County for services rendered after expiration/termination of this Contract shall not constitute a waiver of County's right to recover such payment from the Contractor. This provision shall survive the expiration or other termination of this Contract.

1.5 INVOICES AND PAYMENTS

1.5.1 Contractor's Invoice Procedures

The Contractor shall submit an invoice to the Department on or before the fifteenth day of each month for compensation earned during the preceding calendar month. The Contractor shall submit two copies of each invoice and shall submit a separate invoice for each Work Order on which it

claims payments. Invoices shall identify the Contractor number, total hours bid, if applicable, and the name of the Work Order or project. Invoices for services billed on an hourly basis shall itemize dates and hours of work.

Upon the Department's receipt and the Contract Administrator's review and approval of the invoice, the County shall pay the net amount currently payable shown on the invoice less any other setoff or deduction authorized by the Contract. Such setoffs and deductions include, but are not limited to, the cost of replacement services.

The County may withhold from payment any amount assessed by the Contract Administrator which is authorized as a setoff, withholding by the terms and conditions of the Contract, including but not limited to liquidated damages pursuant to Section 2.43, Termination for Default.

1.6 ADMINISTRATION OF CONTRACT – CONTRACTOR

1.6.1 Contractor's Contract Representative

The Contractor's Contract Representative is designated in Form P-13 - Contractor's Administration. The Contractor shall notify the County in writing of any change in the name or address of the Contractor's Contract Representative.

The Contractor's Contract Representative shall be responsible for the Contractor's day-to-day activities as related to this Contract and shall coordinate with County's Contract Administrator on a regular basis.

1.6.2 Background and Security Investigations

Each of Contractor's staff performing services under this Contract, who is in a designated sensitive position as determined by County in County's sole discretion, shall undergo and pass a background investigation to the satisfaction of County as a condition of beginning and continuing to perform services under this Contract. Such background investigation may include, but shall not be limited to, criminal conviction information obtained through fingerprints submitted to the California Department of Justice.

The fees associated with the background investigation shall be at the

expense of the Contractor, regardless if the member of Contractor's staff passes or fails the background investigation.

If a member of Contractor's staff does not pass the background investigation, County may request that the member of Contractor's staff be immediately removed from performing services under the Contract at any time during the term of the Contract. County will not provide to Contractor or to Contractor's staff any information obtained through the County's background investigation.

County, in its sole discretion, may immediately deny or terminate facility access to any member of Contractor's staff that does not pass such investigation to the satisfaction of the County or whose background or conduct is incompatible with County facility access.

Disqualification of any member of Contractor's staff pursuant to this Paragraph 1.6.2 shall not relieve Contractor of its obligation to complete all work in accordance with the terms and conditions of this Contract.

1.6.3 Confidentiality

Contractor shall maintain the confidentiality of all records and information in accordance with all applicable Federal, State and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures relating to confidentiality, including, without limitation, County policies concerning information technology security and the protection of confidential records and information.

Contractor shall indemnify, defend, and hold harmless County and its Special Districts, elected and appointed officers, employees, and agents, from and against any and all claims, demands, damages, liabilities, losses, costs and expenses, including, without limitation, defense costs and legal, accounting and other expert, consulting, or professional fees, arising from, connected with, or related to any failure by Contractor, its officers, employees, agents, or subcontractors, to comply with this Paragraph 1.6.3, as determined by County in its sole judgment. Any legal defense pursuant to Contractor's indemnification obligations under this Paragraph 1.6.3 shall be conducted by Contractor and performed by

counsel selected by Contractor and approved by County. Notwithstanding the preceding sentence, County shall have the right to participate in any such defense at its sole cost and expense, except that in the event Contractor fails to provide County with a full and adequate defense, as determined by County in its sole judgment, County shall be entitled to retain its own counsel, including, without limitation, County Counsel, and reimbursement from Contractor for all such costs and expenses incurred by County in doing so. Contractor shall not have the right to enter into any settlement, agree to any injunction, or make any admission, in each case, on behalf of County without County's prior written approval.

Contractor shall inform all of its officers, employees, agents and subcontractors providing services hereunder of the confidentiality provisions of this Contract.

**LOS ANGELES COUNTY DEPARTMENT OF BEACHES AND HARBORS
CONTRACT FOR AS-NEEDED TRAFFIC ENGINEER CONSULTANT SERVICES**

PART TWO – STANDARD TERMS AND CONDITIONS

2.0 STANDARD TERMS AND CONDITIONS

2.1 AMENDMENTS

- 2.1.1 For any change which affects the scope of work, term, contract sum, payments, or any term or condition included under this Contract, an Amendment shall be prepared and executed by the Contractor and by the Board of Supervisors.
- 2.1.2 The County's Board of Supervisors or Chief Executive Officer or designee may require the addition and/or change of certain terms and conditions in the Contract during the term of this Contract. The County reserves the right to add and/or change such provisions as required by the County's Board of Supervisors or Chief Executive Officer. To implement such changes, an Amendment to the Contract shall be prepared and executed by the Contractor and by the Director of the Department or his authorized designee.
- 2.1.3 The Director of the Department or his/her designee, may at his/her sole discretion, authorize extensions of time as defined in Paragraph 1.3, Contract Term. The Contractor agrees that such extensions of time shall not change any other term or condition of this Contract during the period of such extensions. To implement an extension of time, an Amendment to the Contract shall be prepared and executed by the Contractor and by the Director of the Department or his/her authorized designee.

2.2 ASSIGNMENT AND DELEGATION

- 2.2.1 The Contractor shall not assign its rights or delegate its duties under this Contract, or both, whether in whole or in part, without the prior written consent of County, in its discretion, and any attempted assignment or delegation without such consent shall be null and void. For purposes of this sub-paragraph, County consent shall require a written amendment to the

Contract, which is formally approved and executed by the parties.

Any payments by the County to any approved delegate or assignee on any claim under this Contract shall be deductible, at County's sole discretion, against the claims, which the Contractor may have against the County.

2.2.2 Shareholders, partners, members, or other equity holders of Contractor may transfer, sell, exchange, assign, or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment, or divestment is effected in such a way as to give majority control of Contractor to any person(s), corporation, partnership, or legal entity other than the majority controlling interest therein at the time of execution of the Contract, such disposition is an assignment requiring the prior written consent of County in accordance with applicable provisions of this Contract.

2.2.3 Any assumption, assignment, delegation, or takeover of any of the Contractor's duties, responsibilities, obligations, or performance of same by any entity other than the Contractor, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without County's express prior written approval, shall be a material breach of the Contract which may result in the termination of this Contract. In the event of such termination, County shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of default by Contractor.

2.3 AUTHORIZATION WARRANTY

The Contractor represents and warrants that the person executing this Contract for the Contractor is an authorized agent who has actual authority to bind the Contractor to each and every term, condition, and obligation of this Contract and that all requirements of the Contractor have been fulfilled to provide such actual authority.

2.4 BUDGET REDUCTIONS

In the event that the County's Board of Supervisors adopts, in any fiscal year, a County Budget which provides for reductions in the salaries and benefits paid to the majority of County employees and imposes similar reductions with respect to County Contracts, the County reserves the right to reduce its payment obligation under this Contract correspondingly for that fiscal year and any subsequent fiscal year during the term of this Contract (including any extensions), and the services to be provided by the Contractor under this Contract shall also be reduced correspondingly. The County's notice to the Contractor regarding said reduction in payment obligation shall be provided within thirty (30) calendar days of the Board's approval of such actions. Except as set forth in the preceding sentence, the Contractor shall continue to provide all of the services set forth in this Contract.

2.5 COMPLIANCE WITH APPLICABLE LAW

2.5.1 In the performance of this Contract, Contractor shall comply with all applicable Federal, State and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures, and all provisions required thereby to be included in this Contract are hereby incorporated herein by reference.

2.5.2 Contractor shall indemnify, defend, and hold harmless County and its Special Districts, elected and appointed officers, employees, and agents, from and against any and all claims, demands, damages, liabilities, losses, costs, and expenses, including, without limitation, defense costs and legal, accounting and other expert, consulting or professional fees, arising from, connected with, or related to any failure by Contractor, its officers, employees, agents, or subcontractors, to comply with any such laws, rules, regulations, ordinances, directives, guidelines, policies, or procedures, as determined by County in its sole judgment. Any legal defense pursuant to Contractor's indemnification obligations under this Paragraph 2.5 shall be conducted by Contractor and performed by counsel selected by Contractor and approved by County. Notwithstanding the preceding sentence, County shall have the right to participate in any

such defense at its sole cost and expense, except that in the event Contractor fails to provide County with a full and adequate defense, as determined by County in its sole judgment, County shall be entitled to retain its own counsel, including, without limitation, County Counsel, and reimbursement from Contractor for all such costs and expenses incurred by County in doing so. Contractor shall not have the right to enter into any settlement, agree to any injunction or other equitable relief, or make any admission, in each case, on behalf of County without County's prior written approval.

2.6 COMPLIANCE WITH CIVIL RIGHTS LAWS

The Contractor hereby assures that it will comply with Subchapter VI of the Civil Rights Act of 1964, 42 USC Sections 2000 (e) (1) through 2000 (e) (17), to the end that no person shall, on the grounds of race, creed, color, sex, religion, ancestry, age, condition of physical handicap, marital status, political affiliation, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract.

2.7 COMPLIANCE WITH THE COUNTY'S JURY SERVICE PROGRAM

Jury Service Program:

This Contract is subject to the provisions of the County's ordinance entitled Contractor Employee Jury Service ("Jury Service Program") as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code, a copy of which is attached as *Exhibit 4* and incorporated by reference into and made a part of this Contract.

2.8 CONFLICT OF INTEREST

2.8.1 No County employee whose position with the County enables such employee to influence the award of this Contract or any competing Contract, and no spouse or economic dependent of such employee, shall be employed in any capacity by the Contractor or have any other direct or

indirect financial interest in this Contract. No officer or employee of the Contractor who may financially benefit from the performance of work hereunder shall in any way participate in the County's approval, or ongoing evaluation, of such work, or in any way attempt to unlawfully influence the County's approval or ongoing evaluation of such work.

2.8.2 The Contractor shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Contract. The Contractor warrants that it is not now aware of any facts that create a conflict of interest. If the Contractor hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to the County. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this subparagraph shall be a material breach of this Contract.

2.9 CONSIDERATION OF HIRING COUNTY EMPLOYEES TARGETED FOR LAYOFF/OR RE-EMPLOYMENT LIST

Should the Contractor require additional or replacement personnel after the effective date of this Contract to perform the services set forth herein, the Contractor shall give first consideration for such employment openings to qualified, permanent County employees who are targeted for layoff or qualified, former County employees who are on a re-employment list during the life of this Contract.

2.10 CONTRACTOR RESPONSIBILITY AND DEBARMENT

2.10.1 Responsible Contractor

A responsible Contractor is a Contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is the County's policy to conduct business only with responsible Contractors.

2.10.2 Chapter 2.202 of the County Code

The Contractor is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the County acquires information concerning the performance of the Contractor on this or other contracts which indicates that the Contractor is not responsible, the County may, in addition to other remedies provided in the Contract, debar the Contractor from bidding or proposing on, or being awarded, and/or performing work on County contracts for a specified period of time, which generally will not exceed five years but may exceed five years or be permanent if warranted by the circumstances, and terminate any or all existing Contracts the Contractor may have with the County.

2.10.3 Non-responsible Contractor

The County may debar a Contractor if the Board of Supervisors finds, in its discretion, that the Contractor has done any of the following: (1) violated a term of a contract with the County or a nonprofit corporation created by the County, (2) committed an act or omission which negatively reflects on the Contractor's quality, fitness or capacity to perform a contract with the County, any other public entity, or a nonprofit corporation created by the County, or engaged in a pattern or practice which negatively reflects on same, (3) committed an act or offense which indicates a lack of business integrity or business honesty, or (4) made or submitted a false claim against the County or any other public entity.

2.10.4 Contractor Hearing Board

1. If there is evidence that the Contractor may be subject to debarment, the Department will notify the Contractor in writing of the evidence which is the basis for the proposed debarment and will advise the Contractor of the scheduled date for a debarment hearing before the Contractor Hearing Board.
2. The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The Contractor and/or the Contractor's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor

Hearing Board shall prepare a tentative proposed decision, which shall contain a recommendation regarding whether the Contractor should be debarred, and, if so, the appropriate length of time of the debarment. The Contractor and the Department shall be provided an opportunity to object to the tentative proposed decision prior to its presentation to the Board of Supervisors.

3. After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision, and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.
4. If a Contractor has been debarred for a period longer than five (5) years, that Contractor may after the debarment has been in effect for at least five (5) years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. The County may, in its discretion, reduce the period of debarment or terminate the debarment if it finds that the Contractor has adequately demonstrated one or more of the following: (1) elimination of the grounds for which the debarment was imposed; (2) a bona fide change in ownership or management; (3) material evidence discovered after debarment was imposed; or (4) any other reason that is in the best interests of the County.
5. The Contractor Hearing Board will consider a request for review of a debarment determination only where (1) the Contractor has been debarred for a period longer than five (5) years; (2) the debarment has been in effect for at least five (5) years; and (3) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board will provide notice of the hearing on the request. At the hearing, the Contractor Hearing Board shall conduct a

hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing shall be conducted and the request for review decided by the Contractor Hearing Board pursuant to the same procedures as for a debarment hearing.

6. The Contractor Hearing Board's proposed decision shall contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Contractor Hearing Board shall present its proposed decision and recommendation to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

2.10.5 Subcontractors of Contractor

These terms shall also apply to Subcontractors of County Contractors.

2.11 CONTRACTOR'S ACKNOWLEDGEMENT OF COUNTY'S COMMITMENT TO THE SAFELY SURRENDERED BABY LAW

The Contractor acknowledges that the County places a high priority on the implementation of the Safely Surrendered Baby Law. The Contractor understands that it is the County's policy to encourage all County Contractors to voluntarily post the County's "Safely Surrendered Baby Law" poster in a prominent position at the Contractor's place of business. The Contractor will also encourage its Subcontractors, if any, to post this poster in a prominent position in the Subcontractor's place of business. The County's Department of Children and Family Services will supply the Contractor with the poster to be used. Information on how to receive the poster can be found on the Internet at www.babysafela.org.

2.12 CONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM

- 2.12.1 The Contractor acknowledges that the County has established a goal of ensuring that all individuals who benefit financially from the County through contract are in compliance with their court-ordered child, family and spousal

support obligations in order to mitigate the economic burden otherwise imposed upon the County and its taxpayers.

2.12.2 As required by the County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting the Contractor's duty under this Contract to comply with all applicable provisions of law, the Contractor warrants that it is now in compliance and shall during the term of this Contract maintain in compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or Child Support Services Department Notices of Wage and Earnings Assignment for Child, Family or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

2.13 CONTRACTOR'S WARRANTY OF COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM

Contractor acknowledges that County has established a goal of ensuring that all individuals and businesses that benefit financially from County through contract are current in paying their property tax obligations (secured and unsecured roll) in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

Unless Contractor qualifies for an exemption or exclusion, Contractor warrants and certifies that to the best of its knowledge it is now in compliance, and during the term of this contract will maintain compliance with Los Angeles County Code Chapter 2.206.

2.14 COUNTY'S QUALITY ASSURANCE PLAN

The County or its agent will evaluate the Contractor's performance under this Contract on not less than an annual basis. Such evaluation will include assessing the Contractor's compliance with all Contract terms and conditions and performance standards. Contractor deficiencies which the County determines are severe or continuing and that may place performance of the Contract in jeopardy if

not corrected will be reported to the Board of Supervisors. The report will include improvement/corrective action measures taken by the County and the Contractor. If improvement does not occur consistent with the corrective action measures, the County may terminate this Contract or impose other penalties as specified in this Contract.

2.15 DAMAGE TO COUNTY FACILITIES, BUILDINGS OR GROUNDS

2.15.1 The Contractor shall repair, or cause to be repaired, at its own cost, any and all damage to County facilities, buildings, or grounds caused by the Contractor or employees or agents of the Contractor. Such repairs shall be made immediately after the Contractor has become aware of such damage, but in no event later than thirty (30) days after the occurrence.

2.15.2 If the Contractor fails to make timely repairs, County may make any necessary repairs. All costs incurred by County, as determined by County, for such repairs shall be repaid by the Contractor by cash payment upon demand.

2.16 EMPLOYMENT ELIGIBILITY VERIFICATION

2.16.1 The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirements set forth in Federal and State statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal and State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, (P.L. 99-603), or as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by law.

2.16.2 The Contractor shall indemnify, defend, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or

both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

2.17 FACSIMILE REPRESENTATIONS

The County and the Contractor hereby agree to regard facsimile representations of original signatures of authorized officers of each party, when appearing in appropriate places on the Amendments prepared pursuant to sub-paragraph 2.1, and received via communications facilities, as legally sufficient evidence that such original signatures have been affixed to Amendments to this Contract, such that the parties need not follow up facsimile transmissions of such documents with subsequent (non-facsimile) transmission of "original" versions of such documents.

2.18 FAIR LABOR STANDARDS

The Contractor shall comply with all applicable provisions of the Federal Fair Labor Standards Act and shall indemnify, defend, and hold harmless the County and its agents, officers, and employees from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to, the Federal Fair Labor Standards Act, for work performed by the Contractor's employees for which the County may be found jointly or solely liable.

2.19 FORCE MAJEURE

2.19.1 Neither party shall be liable for such party's failure to perform its obligations under and in accordance with this Contract, if such failure arises out of fires, floods, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by such party or any of such party's subcontractors), freight embargoes, or other similar events to those described above, but in every such case the failure to perform must be totally beyond the control and without any fault or negligence of such party (such events are referred to in this sub-paragraph as "force majeure

events").

2.19.2 Notwithstanding the foregoing, a default by a subcontractor of Contractor shall not constitute a force majeure event, unless such default arises out of causes beyond the control of both Contractor and such subcontractor, and without any fault or negligence of either of them. In such case, Contractor shall not be liable for failure to perform, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Contractor to meet the required performance schedule. As used in this sub-paragraph, the term "subcontractor" and "subcontractors" mean subcontractors at any tier.

2.19.3 In the event Contractor's failure to perform arises out of a force majeure event, Contractor agrees to use commercially reasonable best efforts to obtain goods or services from other sources, if applicable, and to otherwise mitigate the damages and reduce the delay caused by such force majeure event.

2.20 GOVERNING LAW, JURISDICTION AND VENUE

This Contract shall be governed by, and construed in accordance with the internal laws of the State of California. The Contractor agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Contract and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles.

2.21 INDEPENDENT CONTRACTOR STATUS

2.21.1 This Contract is by and between the County and the Contractor and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between the County and the Contractor. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever.

2.21.2 The Contractor shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Contract all

compensation and benefits. The County shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of the Contractor.

2.21.3 The Contractor understands and agrees that all persons performing work pursuant to this Contract are, for purposes of Workers' Compensation liability, solely employees of the Contractor and not employees of the County. The Contractor shall be solely liable and responsible for furnishing any and all Workers' Compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of the Contractor pursuant to this Contract.

2.21.4 The Contractor shall adhere to the provisions stated in sub-paragraph 1.6.3.

2.22 INDEMNIFICATION

The Contractor shall indemnify, defend and hold harmless the County, its Special Districts, elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with the Contractor's acts and/or omissions arising from and/or relating to this Contract.

2.23 GENERAL PROVISIONS FOR ALL INSURANCE COVERAGE

Without limiting Contractor's indemnification of County, and in the performance of this Contract and until all of its obligations pursuant to this Contract have been met, Contractor shall provide and maintain at its own expense insurance coverage satisfying the requirements specified in Sections 2.23 and 2.24 of this Contract. These minimum insurance coverage terms, types and limits (the "Required Insurance") also are in addition to and separate from any other contractual obligation imposed upon Contractor pursuant to this Contract.

The County in no way warrants that the Required Insurance is sufficient to protect the Contractor for liabilities which may arise from or relate to this Contract.

The County in no way warrants that the Required Insurance is sufficient to protect the Contractor for liabilities which may arise from or relate to this Contract.

2.23.1 Evidence of Coverage and Notice to County

- Certificate(s) of insurance coverage (Certificate) satisfactory to County, and a copy of an Additional Insured endorsement confirming County and its Agents (defined below) has been given Insured status under the Contractor's General Liability policy, shall be delivered to County at the address shown below and provided prior to commencing services under this Contract.
- Renewal Certificates shall be provided to County not less than 10 days prior to Contractor's policy expiration dates. The County reserves the right to obtain complete, certified copies of any required Contractor and/or Sub-Contractor insurance policies at any time.
- Certificates shall identify all Required Insurance coverage types and limits specified herein, reference this Contract by name or number, and be signed by an authorized representative of the insurer(s). The Insured party named on the Certificate shall match the name of the Contractor identified as the contracting party in this Contract. Certificates shall provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, its financial rating, the amounts of any policy deductibles or self-insured retentions exceeding fifty thousand (\$50,000.00) dollars, and list any County required endorsement forms.
- Neither the County's failure to obtain, nor the County's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by the Contractor, its insurance broker(s) and/or insurer(s),

shall be construed as a waiver of any of the Required Insurance provisions.

Certificates and copies of any required endorsements shall be sent to:

Los Angeles County Department of Beaches and Harbors
Department of Beaches and Harbors, Contracts Unit
13493 Fiji Way, Trailer 3
Marina Del Rey, CA 90292
Attention: Nicolette Taylor, Contracts Analyst

Contractor also shall promptly report to County any injury or property damage accident or incident, including any injury to a Contractor employee occurring on County property, and any loss, disappearance, destruction, misuse, or theft of County property, monies or securities entrusted to Contractor. Contractor also shall promptly notify County of any third party claim or suit filed against Contractor or any of its Sub-Contractors which arises from or relates to this Contract, and could result in the filing of a claim or lawsuit against Contractor and/or County.

2.23.2 Additional Insured Status and Scope of Coverage

The County of Los Angeles, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively County and its Agents) shall be provided additional insured status under Contractor's General Liability policy with respect to liability arising out of Contractor's ongoing and completed operations performed on behalf of the County. County and its Agents additional insured status shall apply with respect to liability and defense of suits arising out of the Contractor's acts or omissions, whether such liability is attributable to the Contractor or to the County. The full policy limits and scope of protection also shall apply to the County and its Agents as an additional insured, even if they exceed the County's minimum Required Insurance specifications herein. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.

2.23.3 Cancellation of or Changes in Insurance

Contractor shall provide County with, or Contractor's insurance policies shall contain a provision that County shall receive written notice of cancellation or any change in Required Insurance, including insurer, limits of coverage, term of coverage or policy period. The written notice shall be provided to County at least ten (10) days in advance of cancellation for non-payment of premium and thirty (30) days in advance for any other cancellation or policy change. Failure to provide written notice of cancellation or any change in Required Insurance may constitute a material breach of the Contract, in the sole discretion of the County, upon which the County may suspend or terminate this Contract.

2.23.4 Failure to Maintain Insurance

Contractor's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall constitute a material breach of the Contract, upon which County immediately may withhold payments due to Contractor, and/or suspend or terminate this Contract. County, at its sole discretion, may obtain damages from Contractor resulting from said breach.

Alternatively, the County may purchase the Required Insurance, and without further notice to Contractor, deduct the premium cost from sums due to Contractor or pursue Contractor reimbursement.

2.23.5 Insurer Financial Ratings

Coverage shall be placed with insurers acceptable to the County with A.M. Best ratings of not less than A:VII unless otherwise approved by County.

2.23.6 Contractor's Insurance Shall Be Primary

Contractor's insurance policies, with respect to any claims related to this Contract, shall be primary with respect to all other sources of coverage available to Contractor. Any County maintained insurance or self-insurance coverage shall be in excess of and not contribute to any Contractor coverage.

2.23.7 Waivers of Subrogation

To the fullest extent permitted by law, the Contractor hereby waives its rights and its insurer(s)' rights of recovery against County under all the

Required Insurance for any loss arising from or relating to this Contract. The Contractor shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to effect such waiver.

2.23.8 Sub-Contractor Insurance Coverage Requirements

Contractor shall include all Sub-Contractors as insureds under Contractor's own policies, or shall provide County with each Sub-Contractor's separate evidence of insurance coverage. Contractor shall be responsible for verifying each Sub-Contractor complies with the Required Insurance provisions herein, and shall require that each Sub-Contractor name the County and Contractor as additional insureds on the Sub-Contractor's General Liability policy. Contractor shall obtain County's prior review and approval of any Sub-Contractor request for modification of the Required Insurance.

2.23.9 Deductibles and Self-Insured Retentions (SIRs)

Contractor's policies shall not obligate the County to pay any portion of any Contractor deductible or SIR. The County retains the right to require Contractor to reduce or eliminate policy deductibles and SIRs as respects the County, or to provide a bond guaranteeing Contractor's payment of all deductibles and SIRs, including all related claims investigation, administration and defense expenses. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

2.23.10 Claims Made Coverage

If any part of the Required Insurance is written on a claims made basis, any policy retroactive date shall precede the effective date of this Contract. Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.

2.23.11 Application of Excess Liability Coverage

Contractors may use a combination of primary and excess insurance policies which provide coverage as broad as the underlying primary policies, to satisfy the Required Insurance provisions.

2.23.12 Separation of Insureds

All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.

2.23.13 Alternative Risk Financing Programs

The County reserves the right to review, and then approve, Contractor use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy the Required Insurance provisions. The County and its Agents shall be designated as an Additional Covered Party under any approved program.

2.23.14 County Review and Approval of Insurance Requirements

The County reserves the right to review and adjust the Required Insurance provisions, conditioned upon County's determination of changes in risk exposures.

2.24 INSURANCE COVERAGE

2.24.1 Commercial General Liability insurance (providing scope of coverage equivalent to ISO policy form CG 00 01), naming County and its Agents as an additional insured, with limits of not less than:

General Aggregate:	\$2 million
Products/Completed Operations Aggregate:	\$1 million
Personal and Advertising Injury:	\$1 million
Each Occurrence:	\$1 million

2.24.2 Automobile Liability insurance (providing scope of coverage equivalent to ISO policy form CA 00 01) with limits of not less than \$1 million for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Insurance shall cover liability arising out of Contractor's use of autos pursuant to this Contract, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

2.24.3 Workers Compensation and Employers' Liability insurance or qualified self-insurance satisfying statutory requirements, which includes

Employers' Liability coverage with limits of not less than \$1 million per accident. If Contractor will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage also shall include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming the County as the Alternate Employer, and the endorsement form shall be modified to provide that County will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision. If applicable to Contractor's operations, coverage also shall be arranged to satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.

2.24.4 Professional Liability/Errors and Omissions

Insurance covering Contractor's liability arising from or related to this Contract, with limits of not less than \$1 million per claim and \$2 million aggregate. Further, Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following this Agreement's expiration, termination or cancellation.

2.25 LIQUIDATED DAMAGES

2.25.1 If, in the judgment of the Director, or his/her designee, the Contractor is deemed to be non-compliant with the terms and obligations assumed hereby, the Director, or his/her designee, at his/her option, in addition to, or in lieu of, other remedies provided herein, may withhold the entire monthly payment or deduct pro rata from the Contractor's invoice for work not performed. A description of the work not performed and the amount to be withheld or deducted from payments to the Contractor from the County, will be forwarded to the Contractor by the Director, or his/her designee, in a written notice describing the reasons for said action.

2.25.2 If the Director, or his/her designee, determines that there are deficiencies in the performance of this Contract that the Director, or his/her designee, deems are correctable by the Contractor over a certain time span, the Director, or his/her designee, will provide a written notice to the Contractor

to correct the deficiency within specified time frames. Should the Contractor fail to correct deficiencies within said time frame, the Director, or his/her designee, may: (a) deduct from the Contractor's payment, pro rata, those applicable portions of the Monthly Contract Sum; and/or (b) deduct liquidated damages. The parties agree that it will be impracticable or extremely difficult to fix the extent of actual damages resulting from the failure of the Contractor to correct a deficiency within the specified time frame. The parties hereby agree that under the current circumstances a reasonable estimate of such damages is One Hundred Dollars (\$100) per day per infraction, or as specified in the *Performance Requirements Summary (PRS) Chart*, as defined in *Statement of Work, Attachment 1*, hereunder, and that the Contractor shall be liable to the County for liquidated damages in said amount. Said amount shall be deducted from the County's payment to the Contractor; and/or (c) Upon giving five (5) days notice to the Contractor for failure to correct the deficiencies, the County may correct any and all deficiencies and the total costs incurred by the County for completion of the work by an alternate source, whether it be County forces or separate private contractor, will be deducted and forfeited from the payment to the Contractor from the County, as determined by the County.

2.25.3 The action noted in sub-paragraph 2.25.2 shall not be construed as a penalty, but as adjustment of payment to the Contractor to recover the County cost due to the failure of the Contractor to complete or comply with the provisions of this Contract.

2.25.4 This sub-paragraph shall not, in any manner, restrict or limit the County's right to damages for any breach of this Contract provided by law or as specified in the PRS or sub-paragraph 2.25.2, and shall not, in any manner, restrict or limit the County's right to terminate this Contract as agreed to herein.

2.26 MOST FAVORED PUBLIC ENTITY

If the Contractor's prices decline, or should the Contractor at any time during the term of this Contract provide the same goods or services under similar quantity and delivery conditions to the State of California or any county, municipality, or district of the State at prices below those set forth in this Contract, then such lower prices shall be immediately extended to the County.

2.27 NONDISCRIMINATION AND AFFIRMATIVE ACTION

2.27.1 The Contractor certifies and agrees that all persons employed by it, its affiliates, subsidiaries, or holding companies are and shall be treated equally without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations.

2.27.2 The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action shall include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

2.27.3 The Contractor certifies and agrees that it will deal with its subcontractors, bidders, or vendors without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation.

2.27.4 The Contractor certifies and agrees that it, its affiliates, subsidiaries, or holding companies shall comply with all applicable Federal and State laws and regulations to the end that no person shall, on the grounds of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, be excluded from

participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract.

2.27.5 The Contractor shall allow County representatives access to the Contractor's employment records during regular business hours to verify compliance with the provisions of this sub-paragraph 2.27 when so requested by the County.

2.27.6 If the County finds that any provisions of this sub-paragraph 2.27 have been violated, such violation shall constitute a material breach of this Contract upon which the County may terminate or suspend this Contract. While the County reserves the right to determine independently that the anti-discrimination provisions of this Contract have been violated, in addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that the Contractor has violated Federal or State anti-discrimination laws or regulations shall constitute a finding by the County that the Contractor has violated the anti-discrimination provisions of this Contract.

2.27.7 The parties agree that in the event the Contractor violates any of the anti-discrimination provisions of this Contract, the County shall, at its sole option, be entitled to the sum of Five Hundred Dollars (\$500) for each such violation pursuant to California Civil Code Section 1671 as liquidated damages in lieu of terminating or suspending this Contract.

2.28 NON EXCLUSIVITY

Nothing herein is intended nor shall be construed as creating any exclusive arrangement with the Contractor. This Contract shall not restrict the Department from acquiring similar, equal or like goods and/or services from other entities or sources.

2.29 NOTICE OF DELAYS

Except as otherwise provided under this Contract, when either party has knowledge that any actual or potential situation is delaying or threatens to delay

the timely performance of this Contract, that party shall, within one (1) business day, give notice thereof, including all relevant information with respect thereto, to the other party.

2.30 NOTICE OF DISPUTES

The Contractor shall bring to the attention of the Contract Administrator any dispute between the County and the Contractor regarding the performance of services as stated in this Contract. If the County's Contract Administrator is not able to resolve the dispute, the Director or his/her designee shall resolve it.

2.31 NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT

The Contractor shall notify its employees, and shall require each Subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the Federal income tax laws. Such notice shall be provided in accordance with the requirements set forth in Internal Revenue Service Notice No.1015, Exhibit 5.

2.32 NOTICE TO EMPLOYEES REGARDING THE SAFELY SURRENDERED BABY LAW

The Contractor shall notify and provide to its employees, and shall require each Subcontractor to notify and provide to its employees, a fact sheet regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The fact sheet is set forth in *Exhibit 6* of this Contract and is also available on the Internet at www.babysafela.org for printing purposes.

2.33 NOTICES

All notices or demands required or permitted to be given or made under this Contract shall be in writing and shall be hand delivered with signed receipt or mailed by first-class registered or certified mail, postage prepaid, addressed to the parties as identified in *Form P-13, Contractor's Administration*. Notices addressed

to the County shall be addressed to the Director, Department of Beaches and Harbors, 13837 Fiji Way, Marina del Rey, California 90292. Addresses may be changed by either party giving ten (10) days' prior written notice thereof to the other party. The Director or his/her designee shall have the authority to issue all notices or demands required or permitted by the County under this Contract.

2.34 PROHIBITION AGAINST INDUCEMENT OR PERSUASION

Notwithstanding the above, the Contractor and the County agree that, during the term of this Contract and for a period of one year thereafter, neither party shall in any way intentionally induce or persuade any employee of one party to become an employee or agent of the other party. No bar exists against any hiring action initiated through a public announcement.

2.35 PUBLIC RECORDS ACT

2.35.1 Any documents submitted by the Contractor; all information obtained in connection with the County's right to audit and inspect the Contractor's documents, books, and accounting records pursuant to sub-paragraph 2.37 - Record Retention and Inspection/Audit Settlement of this Contract; as well as those documents which were required to be submitted in response to the Request for Proposals (RFP) used in the solicitation process for this Contract, become the exclusive property of the County. All such documents become a matter of public record and shall be regarded as public records. Exceptions will be those elements in the California Government Code Section 6250 *et seq.* (Public Records Act) and which are marked "trade secret", "confidential", or "proprietary". The County shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction. In the event the County is required to defend an action on a Public Records Act request for any of the aforementioned documents, information, books, records, and/or contents of a proposal marked "trade secret", "confidential", or "proprietary", the Contractor agrees to defend and indemnify the County

from all costs and expenses, including reasonable attorney's fees, in action or liability arising under the Public Records Act.

2.36 PUBLICITY

The Contractor shall not disclose any details in connection with this Contract to any person or entity except as may be otherwise provided hereunder or required by law. However, in recognizing the Contractor's need to identify its services and related clients to sustain itself, the County shall not inhibit the Contractor from publishing its role under this Contract within the following conditions:

- The Contractor shall develop all publicity material in a professional manner; and
- During the term of this Contract, the Contractor shall not, and shall not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of the County without the prior written consent of the County's Contractor Administrator. The County shall not unreasonably withhold written consent.

2.36.1 The Contractor may, without the prior written consent of County, indicate in its proposals and sales materials that it has been awarded this Contract with the County of Los Angeles, provided that the requirements of this sub-paragraph 2.36 shall apply.

2.37 RECORD RETENTION AND INSPECTION/AUDIT SETTLEMENT

The Contractor shall maintain accurate and complete financial records of its activities and operations relating to this Contract in accordance with generally accepted accounting principles. The Contractor shall also maintain accurate and complete employment and other records relating to its performance of this Contract. The Contractor agrees that the County, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Contract. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, shall be

kept and maintained by the Contractor and shall be made available to the County during the term of this Contract and for a period of five (5) years thereafter unless the County's written permission is given to dispose of any such material prior to such time. All such material shall be maintained by the Contractor at a location in Los Angeles County, provided that if any such material is located outside Los Angeles County, then, at the County's option, the Contractor shall pay the County for travel, per diem, and other costs incurred by the County to examine, audit, excerpt, copy, or transcribe such material at such other location.

2.37.1 In the event that an audit of the Contractor is conducted specifically regarding this Contract by any Federal or State auditor, or by any auditor or accountant employed by the Contractor or otherwise, then the Contractor shall file a copy of such audit report with the County's Auditor-Controller within thirty (30) days of the Contractor's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Contract. Subject to applicable law, the County shall make a reasonable effort to maintain the confidentiality of such audit report(s).

2.37.2 Failure on the part of the Contractor to comply with any of the provisions of this sub-paragraph 2.37 shall constitute a material breach of this Contract upon which the County may terminate or suspend this Contract.

2.37.3 If, at any time during the term of this Contract or within five (5) years after the expiration or termination of this Contract, representatives of the County conduct an audit of the Contractor regarding the work performed under this Contract, and if such audit finds that the County's dollar liability for any such work is less than payments made by the County to the Contractor, then the difference shall be either: a) repaid by the Contractor to the County by cash payment upon demand or b) at the sole option of the County's Auditor-Controller, deducted from any amounts due to the Contractor from the County, whether under this Contract or otherwise. If such audit finds that the County's dollar liability for such work is more than the payments made by the County to the Contractor, then the difference shall be paid to the Contractor by the County by cash payment, provided that in no event shall

the County's maximum obligation for this Contract exceed the funds appropriated by the County for the purpose of this Contract.

2.38 RECYCLED BOND PAPER

Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at the County landfills, the Contractor agrees to use recycled-content paper to the maximum extent possible on this Contract.

2.39 SUBCONTRACTING

2.39.1 The requirements of this Contract may not be subcontracted by the Contractor **without the advance written approval of the County**. Any attempt by the Contractor to subcontract without the prior consent of the County may be deemed a material breach of this Contract.

2.39.2 If the Contractor desires to subcontract, the Contractor shall provide the following information promptly at the County's request:

- A description of the work to be performed by the Subcontractor;
- A draft copy of the proposed subcontract; and
- Other pertinent information and/or certifications requested by the County.

2.39.3 The Contractor shall indemnify, defend and hold the County harmless with respect to the activities of each and every Subcontractor in the same manner and to the same degree as if such Subcontractor(s) were the Contractor employees.

2.39.4 The Contractor shall remain fully responsible for all performances required of it under this Contract, including those that the Contractor has determined to subcontract, notwithstanding the County's approval of the Contractor's proposed subcontract.

2.39.5 The County's consent to subcontract shall not waive the County's right to prior and continuing approval of any and all personnel, including Subcontractor employees, providing services under this Contract. The Contractor is responsible to notify its Subcontractors of this County right.

2.39.6 The Department's Director is authorized to act for and on behalf of the County with respect to approval of any subcontract and Subcontractor employees. After approval of the subcontract by the County, Contractor shall forward a fully executed subcontract to the County for their files.

2.39.7 The Contractor shall be solely liable and responsible for all payments or other compensation to all Subcontractors and their officers, employees, agents, and successors in interest arising through services performed hereunder, notwithstanding the County's consent to subcontract.

2.39.8 The Contractor shall obtain certificates of insurance, which establish that the Subcontractor maintains all the programs of insurance required by the County from each approved Subcontractor. The Contractor shall ensure delivery of all such documents to:

**Los Angeles County Department of Beaches and Harbors
Administrative Services Division / Contracts Unit
13483 Fiji Way, Trailer 3
Marina del Rey, California 90292**

before any Subcontractor employee may perform any work hereunder.

2.40 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM

Failure of the Contractor to maintain compliance with the requirements set forth in sub-paragraph 2.12 - Contractor's Warranty of Adherence to County's Child Support Compliance Program, shall constitute default under this Contract. Without limiting the rights and remedies available to the County under any other provision of this Contract, failure of the Contractor to cure such default within ninety (90) calendar days of written notice shall be grounds upon which the County may terminate this Contract pursuant to sub-paragraph 2.43 - Termination for Default and pursue debarment of the Contractor, pursuant to County Code Chapter 2.202.

2.41 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM

Failure of Contractor to maintain compliance with the requirements set forth in Paragraph 2.13 "Contractor's Warranty of Compliance with County's Defaulted Property Tax Reduction Program" shall constitute default under this contract. Without limiting the rights and remedies available to County under any other provision of this contract, failure of Contractor to cure such default within 10 days of notice shall be grounds upon which County may terminate this contract and/or pursue debarment of Contractor, pursuant to County Code Chapter 2.206.

2.42 TERMINATION FOR CONVENIENCE

2.42.1 This Contract may be terminated, in whole or in part, from time to time, when such action is deemed by the County, in its sole discretion, to be in its best interest. Termination of work hereunder shall be effected by notice of termination to the Contractor specifying the extent to which performance of work is terminated and the date upon which such termination becomes effective. The date upon which such termination becomes effective shall be no less than ten (10) days after the notice is sent.

2.42.2 After receipt of a notice of termination and except as otherwise directed by the County, the Contractor shall:

- Stop work under this Contract on the date and to the extent specified in such notice, and
- Complete performance of such part of the work as shall not have been terminated by such notice.

2.42.3 All material including books, records, documents, or other evidence bearing on the costs and expenses of the Contractor under this Contract shall be maintained by the Contractor in accordance with sub-paragraph 2.37, Record Retention & Inspection/Audit Settlement.

2.43 TERMINATION FOR DEFAULT

2.43.1 The County may, by written notice to the Contractor, terminate the whole or any part of this Contract, if, in the judgment of the Department's Director:

- Contractor has materially breached this Contract; or
- Contractor fails to timely provide and/or satisfactorily perform any task, deliverable, service, or other work required either under this Contract; or
- Contractor fails to demonstrate a high probability of timely fulfillment of performance requirements under this Contract, or of any obligations of this Contract and in either case, fails to demonstrate convincing progress toward a cure within five (5) working days (or such longer period as the County may authorize in writing) after receipt of written notice from the County specifying such failure.

2.43.2 In the event that the County terminates this Contract in whole or in part as provided in sub-paragraph 2.43.1, the County may procure, upon such terms and in such manner as the County may deem appropriate, goods and services similar to those so terminated. The Contractor shall be liable to the County for any and all excess costs incurred by the County, as determined by the County, for such similar goods and services. The Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this sub-paragraph.

2.43.3 Except with respect to defaults of any Subcontractor, the Contractor shall not be liable for any such excess costs of the type identified in sub-paragraph 2.43.2 if its failure to perform this Contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not limited to: acts of God or of the public enemy, acts of the County in either its sovereign or contractual capacity, acts of Federal or State governments in their sovereign capacities, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a Subcontractor, and if such default arises out of causes beyond the control of both the Contractor

and Subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any such excess costs for failure to perform, unless the goods or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule. As used in this sub-paragraph 2.43.3, the terms "Subcontractor" and "Subcontractors" mean Subcontractor(s) at any tier.

2.43.4 If, after the County has given notice of termination under the provisions of this sub-paragraph 2.43, it is determined by the County that the Contractor was not in default under the provisions of this sub-paragraph 2.43, or that the default was excusable under the provisions of sub-paragraph 2.43.3, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to sub-paragraph 2.42-Termination for Convenience.

2.43.5 The rights and remedies of the County provided in this sub-paragraph 2.43 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

2.44 TERMINATION FOR IMPROPER CONSIDERATION

2.44.1 The County may, by written notice to the Contractor, immediately terminate the right of the Contractor to proceed under this Contract if it is found that consideration, in any form, was offered or given by the Contractor, either directly or through an intermediary, to any County officer, employee, or agent with the intent of securing this Contract or securing favorable treatment with respect to the award, amendment, or extension of this Contract or the making of any determinations with respect to the Contractor's performance pursuant to this Contract. In the event of such termination, the County shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of default by the Contractor.

2.44.2 The Contractor shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made

either to the County manager charged with the supervision of the employee or to the County Auditor-Controller's Employee Fraud Hotline at (800) 544-6861.

2.44.3 Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

2.45 TERMINATION FOR INSOLVENCY

2.45.1 The County may terminate this Contract forthwith in the event of the occurrence of any of the following:

- Insolvency of the Contractor. The Contractor shall be deemed to be insolvent if it has ceased to pay its debts for at least sixty (60) days in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not the Contractor is insolvent within the meaning of the Federal Bankruptcy Code;
- The filing of a voluntary or involuntary petition regarding the Contractor under the Federal Bankruptcy Code;
- The appointment of a Receiver or Trustee for the Contractor; or
- The execution by the Contractor of a general assignment for the benefit of creditors.

2.45.2 The rights and remedies of the County provided in this sub-paragraph 2.45 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

2.46 TERMINATION FOR NON-ADHERENCE OF COUNTY LOBBYIST ORDINANCE

The Contractor, and each County Lobbyist or County Lobbying firm as defined in County Code Section 2.160.010 retained by the Contractor, shall fully comply with the County's Lobbyist Ordinance, County Code Chapter 2.160. Failure on the part of the Contractor or any County Lobbyist or County Lobbying firm retained by the Contractor to fully comply with the County's Lobbyist Ordinance shall constitute a material breach of this Contract, upon which the County may in its sole discretion, immediately terminate or suspend this Contract.

2.47 TERMINATION FOR NON-APPROPRIATION OF FUNDS

Notwithstanding any other provision of this Contract, the County shall not be obligated for the Contractor's performance hereunder or by any provision of this Contract during any of the County's future fiscal years unless and until the County's Board of Supervisors appropriates funds for this Contract in the County's Budget for each such future fiscal year. In the event that funds are not appropriated for this Contract, then this Contract shall terminate as of June 30 of the last fiscal year for which funds were appropriated. The County shall notify the Contractor in writing of any such non-allocation of funds at the earliest possible date.

2.48 VALIDITY

If any provision of this Contract or the application thereof to any person or circumstance is held invalid, the remainder of this Contract and the application of such provision to other persons or circumstances shall not be affected thereby.

2.49 WAIVER

No waiver by the County of any breach of any provision of this Contract shall constitute a waiver of any other breach or of such provision. Failure of the County to enforce at any time, or from time to time, any provision of this Contract shall not be construed as a waiver thereof. The rights and remedies set forth in this subparagraph 2.49 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

2.50 WARRANTY AGAINST CONTINGENT FEES

2.50.1 The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any contract or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

2.50.2 For breach of this warranty, the County shall have the right to terminate this Contract and, at its sole discretion, deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

**LOS ANGELES COUNTY DEPARTMENT OF BEACHES AND HARBORS
CONTRACT FOR AS-NEEDED TRAFFIC ENGINEER**

PART THREE – UNIQUE TERMS AND CONDITIONS

3.0 UNIQUE TERMS AND CONDITIONS

3.1 LOCAL SMALL BUSINESS ENTERPRISE (SBE) PREFERENCE PROGRAM

- 3.1.1** This Contract is subject to the provisions of the County's ordinance entitled Local Small Business Enterprise Preference Program, as codified in Chapter 2.204 of the Los Angeles County Code.
- 3.1.2** The Contractor shall not knowingly and with the intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a Local Small Business Enterprise.
- 3.1.3** The Contractor shall not willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a County official or employee for the purpose of influencing the certification or denial of certification of any entity as a Local small business enterprise
- 3.1.4** If the Contractor has obtained certification as a Local Small Business Enterprise by reason of having furnished incorrect supporting information or by reason of having withheld information, and which knew, or should have known, the information furnished was incorrect or the information withheld was relevant to its request for certification, and which by reason of such certification has been awarded this Contract to which it would not otherwise have been entitled, shall:
1. Pay to the County any difference between the Contract amount and what the County's costs would have been if the Contract had been properly awarded;
 2. In addition to the amount described in subdivision (1), be assessed a penalty in an amount of not more than 10 percent of the amount of the Contract; and

3. Be subject to the provisions of Chapter 2.202 of the Los Angeles County Code (Determinations of Contractor Non-responsibility and Contractor Debarment).

The above penalties shall also apply to any business that has previously obtained proper certification, however, as a result of a change in their status would no longer be eligible for certification, and fails to notify the state and Internal Services Department of this information prior to responding to a solicitation or accepting a contract award.

3.2 TRANSITIONAL JOB OPPORTUNITIES PREFERENCE PROGRAM

- 3.2.1 This Contract is subject to the provisions of the County's ordinance entitled Transitional Job Opportunities Preference Program, as codified in Chapter 2.205 of the Los Angeles County Code.
- 3.2.2 Contractor shall not knowingly and with the intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a Transitional Job Opportunity vendor.
- 3.2.3 Contractor shall not willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a County official or employee for the purpose of influencing the certification or denial of certification of any entity as a Transitional Job Opportunity vendor.
- 3.2.4 If Contractor has obtained County certification as a Transitional Job Opportunity vendor by reason of having furnished incorrect supporting information or by reason of having withheld information, and which knew, or should have known, the information furnished was incorrect or the information withheld was relevant to its request for certification, and which by reason of such certification has been awarded this Contract to which it would not otherwise have been entitled, shall:
 1. Pay to the County any difference between the Contract amount and what the County's costs would have been if the Contract had been properly awarded;

2. In addition to the amount described in subdivision (1), be assessed a penalty in an amount of not more than 10 percent (10%) of the amount of the contract; and
3. Be subject to the provisions of Chapter 2.202 of the Los Angeles County Code (Determinations of Contractor Non-responsibility and Contractor Debarment).

The above penalties shall also apply to any entity that has previously obtained proper certification, however, as a result of a change in their status would no longer be eligible for certification, and fails to notify the certifying department of this information prior to responding to a solicitation or accepting a contract award.

3.3 EMPLOYMENT CONFLICTS

Contractor shall accept no employment which conflicts with its obligations to the County under the Contract and shall disclose any existing potential or actual conflict of interest prior to accepting an assignment. Contractor certifies that it has disclosed to the County any potential or actual conflicts of the type described in this Section 3.3 which existed as of the date hereof. All employment by Contractor on behalf of persons or entities that have an existing interest pertaining to real property within Marina del Rey is prohibited. Such existing interests include, but are not limited to: a leasehold, sublease, concession, permit, contract for the operation or management of real property, pending development proposal or pending lease proposal. Employment by Contractor on behalf of persons or entities with such interests is prohibited whether the employment is related to Marina del Rey property or not.

The prohibition shall continue in effect until the later of (1) one year from the termination or expiration of this Contract or any extension period; or (2) if the Contractor has performed work for the County related to an interest of the person or entity offering employment, the prohibition on accepting employment from that person or entity shall continue until the date of execution of an agreement or other conclusion of all negotiations between the County and that person or entity.

However, at no time after termination or expiration of the Contract or any extension period may the Contractor disclose to any third person any confidential information learned or developed as a result of its work under this Contract or accept employment regarding subject matter as to which the Contractor learned or developed any confidential information as a result of employment by the County.

IN WITNESS WHEREOF, the County has, by order of its Board of Supervisors, caused this Contract to be subscribed by the Chairman of said Board and attested by the Executive Officer thereof, and the Contractor, by its duly authorized representative, has executed the same, as of the day, month, and year set forth below.

Contractor - Barry Kurtz, P.E.

By

Barry Kurtz, P.E.

COUNTY OF LOS ANGELES

By

Mark Ridley-Thomas

CHAIR, PRO TEM, BOARD OF SUPERVISORS

ATTEST:

SACHI A. HAMAI
Executive Officer-Clerk
of the Board of Supervisors

By

Lachelle Smitherman
Deputy SEP 18 2012



I hereby certify that pursuant to
Section 25103 of the Government Code,
delivery of this document has been made.

SACHI A. HAMAI
Executive Officer
Clerk of the Board of Supervisors

By

Lachelle Smitherman
Deputy SEP 18 2012

APPROVED AS TO FORM:

JOHN F. KRATTLI
County Counsel

By

[Signature]
Deputy

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

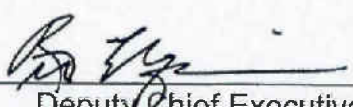
37

SEP 18 2012

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

27840

SOLE SOURCE CHECKLIST

Check (√)	JUSTIFICATION FOR SOLE SOURCE CONTRACTS
	Identify applicable justification and provide documentation for each checked item.
	➤ Only one bona fide source for the service exists; performance and price competition are not available.
	➤ Quick action is required (emergency situation).
	➤ Proposals have been solicited but no satisfactory proposals were received.
	➤ Additional services are needed to complete an ongoing task and it would be prohibitively costly in time and money to seek a new service provider.
	➤ Maintenance service agreements exist on equipment which must be serviced by the authorized manufacturer's service representatives.
	➤ It is most cost-effective to obtain services by exercising an option under an existing contract.
√	➤ It is in the best interest of the County e.g., administrative cost savings, excessive learning curve for a new service provider, etc.
	➤ Other reason. Please explain:
 Deputy Chief Executive Officer, CEO 8/24/12 Date	